

## REMARKS

Claims 1-71 remain pending in the application. Reconsideration is respectfully requested in light of the following remarks.

### Provisional Double Patenting Rejection:

The Examiner provisionally rejected claims 1-71 under the judiciary created doctrine of obviousness-type double patenting as being unpatentable over claims 1-61 of co-pending Application No. 10/055,649. Applicants respectfully traverse this rejection on the grounds that the Examiner has not stated a proper *prima facie* rejection. For support of the rejection, the Examiner states "the context of the claimed invention is the same as the context of the cited claims of the U.S. patent application 10/055,649". However, simply being in the same context (whatever that means) is not a proper reason for holding the claims of the present application obvious from the claims of the listed applications. According to MPEP 804.II.B.1, "the analysis employed in an obviousness-type double patenting determination parallels the guidelines for a 35 U.S.C. 103(a) rejection." This section of the MPEP also states that the same "factual inquires ... that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are employed when making an obviousness-type double patenting analysis." MPEP 804.II.B.1 also states that the Examiner should list the differences between each rejected claim and the claims of the other patent/application, and for each difference the Examiner should give the reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim is an obvious variation of the invention defined in a claim of the other patent/application. Simply stating that the claims are "in the same context" is not a valid reason why a person of ordinary skill in the art would conclude that the invention defined in each claim is an obvious variation of the invention defined in a claim of the other patent/application.

The Examiner also provides a table to show "the similarity of the claimed inventions of application numbers 10/055,741 and 10/055,649." However, as discussed

above, merely showing a “similarity” between the claims of two co-pending patent applications is not sufficient to establish a *prima facie* obviousness-type double patenting rejection. The table provided by the Examiner is incomplete in that it does not show all the words of the compared claims and thus fails to note the *differences* between the claims. MPEP 804.II.B.1 states that the Examiner should list the *differences* between each rejected claim and the claims of the other patent/application, *and for each difference the Examiner should give the reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim is an obvious variation of the invention defined in a claim of the other patent/application*. Since the Examiner has completely failed to address the *differences* between the claims of the two applications, the Examiner has failed to establish a *prima facie* obviousness-type double patenting rejection.

Furthermore, although the Examiner rejected each of claims 1-71, the Examiner’s table only attempts to address claim 1. The Examiner has not specifically addressed *each difference of each claim* of the present application compared to the claims of the other application. The Examiner made no comparison whatsoever for claims 2-71 of the present application. The Examiner clearly has not met the requirements stated in MPEP 804.II.B.1 to establish a *prima facie* obviousness-type double patenting rejection.

Although the Examiner has clearly failed to establish a *prima facie* obviousness-type double patenting rejection, a terminal disclaimer is nonetheless submitted herewith solely for the purpose of expediting allowance of the present application.

## CONCLUSION

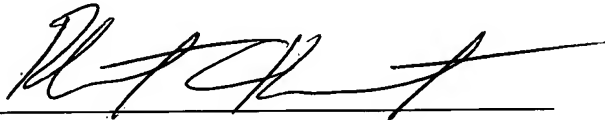
Applicants submit the application is in condition for allowance, and prompt notice to that effect is respectfully requested.

If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5681-07300/RCK.

Also enclosed herewith are the following items:

- ☒ Return Receipt Postcard
- ☐ Petition for Extension of Time
- ☐ Notice of Change of Address
- ☒ Terminal Disclaimer

Respectfully submitted,



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